

National Freedom of Information Act Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

October 20, 2014

Dear National Freedom of Information Officer:

On behalf of Food & Water Watch ("FWW") and pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I respectfully request the following records, between February 1, 2013 and July 31, 2013, regarding the confirmation of Gina McCarthy to the position of EPA Administrator and the EPA investigation into groundwater contamination in Pavillion, Wyoming.

I hereby request any and all records:

- a) of communication between EPA officials and oil and gas industry officials and/or representatives, occurring between February 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY;
- b) of communication between EPA officials and members of Congress and/or their staff, occurring between February 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY;
- c) of communication between EPA officials and Heather Zichal, occurring between February 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY;
- d) of internal EPA communications, occurring between February 1, 2013 and July 31, 2013 regarding the confirmation of Gina McCarthy and the EPA investigation into groundwater contamination in Pavillion, WY.

Food & Water Watch previously submitted a similar request via the Freedom of Information Act (Request Number EPA-HQ-2014-008529), but we are asking that this request be withdrawn. The organization's new request includes responsive records dating back to February 2013.

FWW's fee-waiver request was denied for this previous request. The time limit for the appeal has expired. To preclude another denial of the fee waiver request and to avoid all incumbent delays in processing any subsequent appeals, FWW submits the following information and the attached copy of FWW's untimely fee waiver appeal from the previous FOIA request as grounds for a fee waiver.

I am requesting these records as a representative of Food & Water Watch, a non-profit consumer advocacy organization. I request a fee waiver on the basis of the following points, which together show that “disclosure of [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”¹

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor: The above request specifically identifies the confirmation of Administrator Gina McCarthy and the EPA investigation in Pavillion, WY. As such, the request specifically concerns identifiable operations or activities of the government.
2. For the disclosure to be “likely to contribute” to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request: EPA’s draft report on an investigation into complaints of groundwater contamination initially explained that “the data indicates likely impact to ground water that can be explained by hydraulic fracturing.”² Then EPA handed the investigation to the State of Wyoming, to be partially funded by the very company accused of contaminating groundwater, while maintaining that “EPA stands behind its work and data.”³ FWW, our hundreds of thousands of supporters,⁴ our allies, and affected communities are concerned about EPA’s abrupt abandonment of the Pavillion investigation after initially finding contamination due to hydraulic fracturing, as well as the investigations in Dimock, PA and Parker County, TX.

The requested records would very meaningfully inform public understanding of whether EPA withdrew from the Pavillion investigation in return for a Senate vote on Gina McCarthy’s confirmation. Whether the requested records confirm or contradict undue influence, they will inform public understanding of EPA’s investigation and the operations of the federal government.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons: This issue has implications for communities beyond Pavillion, WY. In 2013 *Wall Street Journal* reported that over 15 million Americans live within a mile of a well drilled since 2000.⁵ The requested records may indicate how EPA and the

¹ 5 U.S.C. § 552(a)(4)(A)(iii) (2012).

² United States Environmental Protection Agency. “Investigation of Ground Water Contamination near Pavillion, Wyoming.” EPA 600/R-00/000. December 2001. <http://www.epa.gov/epaoswer/hq/groundwater/docs/600r000000.pdf>

³ EPA. [Press release]. “Wyoming to lead further investigation of water quality concerns outside of Pavillion with support of EPA.” June 20, 2013

⁴ Food & Water Watch. [Press release]. “On the Heels of Alarming New Information, Americans Against Fracking and Over 200 Groups Call on President Obama to Re-Open Investigations into Connection Between Fracking and Water Contamination in Parker County, Texas.” January 28, 2014.

⁵ Gold, Russell and Tom McGinty. “Energy boom puts wells in America’s backyard.” *Wall Street Journal*. October 25, 2013.

federal government respond to cases of local water contamination, and whether their operations are influenced by corporate interests.

F&WW staff has the ability to analyze the information requested and intends to actively disseminate its analysis broadly to provide for public understanding of the confirmation process and any influence on the decision to end the Pavillion investigation. F&WW will disseminate the results of its independent analysis through its established communication channels, including on-line content, fact sheets, issue briefs and reports, all of which are made freely available to the public. A number of courts have found that requesters' statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public is sufficient to entitle an organization to a fee waiver.⁶

4. The disclosure must contribute "significantly" to public understanding of government operations or activities: Residents of Pavillion, as well as many members of the public, are concerned about the integrity of EPA's decision to step down from the investigation. FWW is also concerned about former Deputy Assistant to the President on Energy and Climate Change Heather Zichal's possible influence on the Pavillion investigation, given her recent acceptance of a board member seat at liquefied natural gas company Cheniere Energy.⁷

As of this writing, the public does not know whether EPA was pressured to end its investigation in exchange for Administrator McCarthy's confirmation. Disclosure of records suggesting that EPA withdrew from its investigation due to political or outside pressure would add significantly to general public understanding of the agency's withdrawal from Pavillion, WY in the face of strong evidence of contamination, as well as the operations of Congress and the White House throughout cabinet confirmation hearings.

5. The extent to which disclosure will serve the requester's commercial interest, if any: Food & Water Watch has no commercial interest in obtaining the agency records that it is requesting.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest: There is no commercial interest, and the public interest is significant, as demonstrated above.

⁶See *S. Utah Wilderness Alliance v. U.S. BLM*, 402 F. Supp. 2d 82, 88 (D.D.C. 2005) (quoting *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) ("courts' findings that organizations' 'statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations . . . [are] sufficient to entitle [the] organization to a fee waiver.'")). See also *Judicial Watch, Inc., v. Rossotti*, 326 F.3d at 1314.

⁷ Cheniere Energy, Inc. "Board of Directors – Cheniere Energy." Available at <http://www.cheniere.com/corporate/directors.shtml>. Accessed October 17, 2014.

The above points, together with the attached fee waiver appeal, contain more than enough information to grant this request and fee waiver. I ask that any non-exempt segregable portions of the requested documents be disclosed.

Within 20 days of its receipt, I expect that EPA will respond to this FOIA request and grant a fee waiver based on the abundance of information provided. If a response is not furnished within this statutorily mandated timeframe, FWW is prepared to take every available option to ensure compliance with the law, and this will include pursuing all incurred attorneys fees.

Thank you for your prompt attention to this matter. Please contact me at 202-683-4951 or fbuzzi@fwwatch.org with any questions regarding this request for information.

Sincerely,

Francesca Buzzi
Researcher
Food & Water Watch